

AMENDED IN SENATE APRIL 20, 2006

AMENDED IN SENATE APRIL 6, 2006

**SENATE BILL**

**No. 1650**

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**Introduced by Senators Kehoe and Dunn**

February 24, 2006

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An act to amend Section 1263.510 of, and to add Sections 1245.245 and 1263.615 to, the Code of Civil Procedure, relating to eminent domain.

LEGISLATIVE COUNSEL'S DIGEST

SB 1650, as amended, Kehoe. Eminent domain.

Existing law requires the governing body of a public entity to adopt a resolution of necessity, as specified, and send related notices before commencing an eminent domain proceeding. Existing law provides that an owner of property taken by eminent domain is entitled to compensation, including compensation for goodwill.

This bill would require the governing body of a public entity to ~~adopt a new resolution of necessity, as specified, and send related notices, before the public entity may use the property, in whole or in part, that is subject to a resolution of necessity, as specified, for a public use other than the public use for which the public entity originally acquired the property stated in the resolution to adopt a resolution authorizing a different use of the property by a vote of at least 2/3 of all members of the governing body of the public entity or a greater vote as required by statute, charter, or ordinance. The bill would also require a public entity to sell property that is not used for the public use stated in the resolution within 10 years of the adoption of the resolution unless the governing body adopts a resolution authorizing a different use or reauthorizing the existing stated public~~

*use by a vote as described above. Among other conditions, the bill would require that a new resolution be approved by at least 2/3 of all members of the governing body of the public entity. The bill would provide that specified property subject to the new resolution procedure be offered back to the original owner or owners of the property, subject to certain requirements, if the new resolution fails passage public entity fails to adopt a new resolution or a resolution reauthorizing the stated public use. The bill would require the Department of Housing and Community Development to provide specified information to a public entity in connection with property that is a single-family residence.*

This bill would also require a public entity acquiring property under specified circumstances to offer the owner of the property a one-year leaseback agreement for that property owner's continued use, subject to the property owner's payment of fair market rents and compliance with other specified conditions, unless the public entity states in writing that the development of the property is scheduled to begin within two years of its acquisition. With regard to the calculation of compensation for the property taken, the bill would prohibit additional goodwill value from accruing during the leaseback.

*The bill would apply prospectively, as specified.*

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 1245.245 is added to the Code of Civil  
2 Procedure, to read:  
3 1245.245. (a) ~~Before a public entity may use any property~~  
4 ~~acquired by any means set forth in subsection (b), in whole or in~~  
5 ~~part for a public use other than the public use for which the~~  
6 ~~public entity acquired the property as provided in a resolution of~~  
7 ~~necessity pursuant to this article, the governing body of the~~  
8 ~~public entity shall adopt a new resolution relating to that changed~~  
9 ~~use which makes the findings detailed in Section 1245.230. In~~  
10 ~~addition to any other notice required by law, the notice required~~  
11 ~~pursuant to this section shall comply with the requirements of~~  
12 ~~Section 1245.235 and shall be sent to each person who was given~~  
13 ~~the notice required by Section 1245.235 in connection with the~~  
14 ~~original acquisition of that property by the public entity. Any~~

1 ~~judicial review of this resolution shall be governed by Section~~  
2 ~~1245.255. The new resolution shall be adopted by approval of at~~  
3 ~~least of two-thirds of all the members of the governing body of~~  
4 ~~the public entity, unless a greater vote is required by statute,~~  
5 ~~charter, or ordinance.~~

6 ~~(b)~~

7 *1245.245. (a) Property acquired by a public entity by any*  
8 *means set forth in subdivision (e) that is subject to a resolution of*  
9 *necessity adopted pursuant to this article shall only be used for*  
10 *the public use stated in the resolution unless the governing body*  
11 *of the public entity adopts a resolution authorizing a different use*  
12 *of the property by a vote of at least two-thirds of all members of*  
13 *the governing body of the public entity, or a greater vote as*  
14 *required by statute, charter, or ordinance. The new resolution*  
15 *shall contain all of the following:*

16 *(1) A general statement of the new public use that is proposed*  
17 *for the property and a reference to the statute that would have*  
18 *authorized the public entity to acquire the property by eminent*  
19 *domain for that use.*

20 *(2) A description of the general location and extent of the*  
21 *property proposed to be used for the new use, with sufficient*  
22 *detail for reasonable identification.*

23 *(3) A declaration that the governing body has found and*  
24 *determined each of the following:*

25 *(A) The public interest and necessity require the proposed use.*

26 *(B) The proposed use is planned and located in the manner*  
27 *that will be most compatible with the greatest public good and*  
28 *least private injury.*

29 *(C) The property described in the resolution is necessary for*  
30 *the proposed use.*

31 *(b) Property acquired by a public entity by any means set forth*  
32 *in subdivision (e) that is subject to a resolution of necessity*  
33 *pursuant to this article, and is not used for the public use stated*  
34 *in the resolution of necessity within 10 years of the adoption of*  
35 *the resolution of necessity, shall be sold in accordance with the*  
36 *terms of subdivisions (f) to (h), inclusive, unless the governing*  
37 *body adopts a resolution according to the terms of subdivision*  
38 *(a) or a resolution according to the terms of this subdivision*  
39 *reauthorizing the existing stated public use of the property by a*  
40 *vote of at least two-thirds of all members of the governing body*

1 of the public entity or a greater vote as required by statute,  
2 charter, or ordinance. A reauthorization resolution under this  
3 subdivision shall contain all of the following:

4 (1) A general statement of the public use that is proposed to be  
5 authorized or reauthorized for the property and a reference to  
6 the statute that authorized the public entity to acquire the  
7 property by eminent domain for that use.

8 (2) A description of the general location and extent of the  
9 property proposed to be used for the public use, but not yet in use  
10 for the public use, with sufficient detail for reasonable  
11 identification.

12 (3) A declaration that the governing body has found and  
13 determined each of the following:

14 (A) The public interest and necessity require the proposed use.

15 (B) The proposed use is planned and located in the manner  
16 that will be most compatible with the greatest public good and  
17 least private injury.

18 (C) The property described in the resolution is necessary for  
19 the proposed use.

20 (c) In addition to any notice required by law, the notice  
21 required for a new or reauthorization resolution sought pursuant  
22 to subdivision (a) or (b) shall comply with the requirements of  
23 Section 1245.235 and shall be sent to each person who was given  
24 notice required by Section 1245.235 in connection with the  
25 original acquisition of the property by the public entity.

26 (d) Any judicial review of an action pursuant to subdivision  
27 (a) or (b) shall be governed by Section 1245.255.

28 (e) The following property acquisitions are subject to the  
29 requirements of this section:

30 (1) Any acquisition by a public entity pursuant to eminent  
31 domain.

32 (2) Any acquisition by a public entity following adoption of a  
33 resolution of necessity pursuant to this article for the property.

34 (3) Any acquisition by a public entity prior to the adoption of  
35 a resolution of necessity pursuant to this article for the property,  
36 but subsequent to a written notice that the public entity may take  
37 the property by eminent domain.

38 ~~(e) If the new resolution required by this section fails,~~

39 (f) If the public entity fails to adopt either a new resolution  
40 pursuant to subdivision (a) or a reauthorization resolution

*pursuant to subdivision (b), as required by this section, the public entity shall offer the original owner or owners of the property the right of first refusal to purchase the property at the present fair market value, as determined by independent, licensed appraisers, except as provided in ~~subsection (d)~~ subdivision (g).*

~~(d) If the new resolution required by this section fails~~

*(g) If the public entity fails to adopt either a new resolution pursuant to subdivision (a) or a reauthorization resolution pursuant to subdivision (b) for a property that is a single-family residence, as required by this section, the public entity shall offer the original owner or owners of the property the right of first refusal to purchase the property at an affordable price, which price shall not be less than the price paid by the agency for the original acquisition, unless the acquisition price was greater than the current fair market value, and shall not be greater than the price paid by the agency for the original acquisition, adjusted for inflation, and shall not be greater than fair market value, if the following requirements are met:*

*(1) The original owner or owners certify their income to the public entity as persons or families of low or moderate income.*

*(2) If the single-family residence is offered at a price that is less than fair market value, the public entity may verify such certifications of income in accordance with procedures used for verification of incomes of purchasers and occupants of housing financed by the California Housing Finance Agency.*

*(3) If the single-family residence is offered at a price that is less than fair market value, the public entity shall impose terms, conditions, and restrictions to assure that the residence will remain available to persons or families of low or moderate income and households with incomes no greater than the incomes of the present occupants in proportion to the area median income. The Department of Housing and Community Development shall provide to the public entity recommendations of standards and criteria for those prices, terms, conditions, and restrictions.*

~~(e)~~

*(h) If the original owner of a property does not choose to purchase the property as provided in ~~subsections (e) and (d)~~ subdivisions (f) and (g) of this section, the public entity shall sell the property as surplus property pursuant to Article 8*

(commencing with Section 54220) of Chapter 5 of Division 2 of Title 5 of the Government Code.

*(i) If residential property acquired by a public entity by any means set forth in subdivision (e) is sold as surplus property pursuant to subdivision (h), and that property was not used for the public use stated in a resolution of necessity adopted pursuant to this article or a resolution adopted pursuant to subdivisions (a) or (b) between the time of its acquisition and the time of its sale as surplus property, the public entity shall pay to the original owner the sum of any financial gain between the original acquisition price, adjusted for inflation, and the final sale price.*

*(j) Upon completion of any acquisition described in subdivision (e) or upon the adoption of a resolution of necessity pursuant to this section, whichever is later, the public entity shall give written notice to the owners or former owners of the properties acquired as described in subdivision (e) stating that the notice, right of first refusal, and return of financial gain rights discussed in this section may accrue.*

SEC. 2. Section 1263.510 of the Code of Civil Procedure is amended to read:

1263.510. (a) The owner of a business conducted on the property taken, or on the remainder if ~~such~~ the property is part of a larger parcel, shall be compensated for loss of goodwill if the owner proves all of the following:

(1) The loss is caused by the taking of the property or the injury to the remainder.

(2) The loss cannot reasonably be prevented by a relocation of the business or by taking steps and adopting procedures that a reasonably prudent person would take and adopt in preserving the goodwill.

(3) Compensation for the loss will not be included in payments under Section 7262 of the Government Code.

(4) Compensation for the loss will not be duplicated in the compensation otherwise awarded to the owner.

(b) Within the meaning of this article, “goodwill” consists of the benefits that accrue to a business as a result of its location, reputation for dependability, skill or quality, and any other circumstances resulting in probable retention of old or acquisition of new patronage.

1 (c) If the public entity and the owner enter into a leaseback  
2 agreement pursuant to Section 1263.615, the following shall  
3 apply:

4 (1) No additional goodwill shall accrue during the lease.

5 (2) The entering of a leaseback agreement shall not be a factor  
6 in determining goodwill. Any liability for goodwill shall be  
7 established and paid at the time of acquisition of the property by  
8 eminent domain or subsequent to notice that the property may be  
9 taken by eminent domain.

10 SEC. 3. Section 1263.615 is added to the Code of Civil  
11 Procedure, to read:

12 1263.615. (a) A public entity shall offer a one-year leaseback  
13 agreement to the owner of a property to be acquired by any  
14 method set forth in ~~subsection~~ *subdivision* (b) for that property  
15 owner's continued use of the property upon acquisition, subject  
16 to the property owner's payment of fair market rents and  
17 compliance with other conditions set forth in subdivision (c),  
18 unless the public entity states in writing that the development or  
19 redevelopment of the property for its stated public use is  
20 scheduled to begin within two years of its acquisition. This  
21 section shall not apply if the public entity states in writing that a  
22 leaseback of the property would create or allow the continuation  
23 of a public nuisance to the surrounding community.

24 (b) The following property acquisitions are subject to the  
25 requirements of this section:

26 (1) Any acquisition by a public entity pursuant to eminent  
27 domain.

28 (2) Any acquisition by a public entity following adoption of a  
29 resolution of necessity pursuant to Article 2 (commencing with  
30 Section 1245.210) of Chapter 4 for the property.

31 (3) Any acquisition by a public entity prior to the adoption of  
32 a resolution of necessity pursuant to Article 2 (commencing with  
33 Section 1245.210) of Chapter 4 for the property, but subsequent  
34 to a written notice that the public entity may take the property by  
35 eminent domain.

36 (c) The following conditions shall apply to any leaseback  
37 offered pursuant to this section:

38 (1) The lessee shall be responsible for any additional waste or  
39 nuisance on the property, and for any other liability arising from  
40 the continued use of the property.

1 (2) The lessor may demand a security deposit to cover any  
2 potential liability arising from the leaseback. The security deposit  
3 shall be reasonable in light of the use of the leased property.

4 (3) The lessor shall be indemnified from any legal liability and  
5 ~~attorneys~~ attorney's fees resulting from any lawsuit against the  
6 lessee or lessor, arising from the operation of the lessee's  
7 business or use of the property.

8 (4) The lessor shall require the lessee to carry adequate  
9 insurance to cover potential liabilities arising from the lease and  
10 use of the property, and shall require that insurance to name the  
11 lessor as an additional insured.

12 (5) Additional goodwill shall not accrue during any lease.

13 (6) The lessee shall be subject to unlawful detainer  
14 proceedings as provided by law.

15 (d) A public entity shall offer to renew a leaseback agreement  
16 for one-year terms, subject to any rent adjustment to reflect  
17 inflation and upon compliance with other conditions set forth in  
18 subdivision (c), unless the public entity states in writing that the  
19 development or redevelopment of the property for its stated  
20 public use is scheduled to begin within two years of the  
21 termination date of the lease. At least 60 days prior to the lease  
22 termination date, the public entity lessor shall either offer a  
23 one-year renewal of the lease or send a statement declaring that  
24 the lease will not be renewed because the development or  
25 redevelopment of the property is scheduled to begin within two  
26 years of the lease termination date. The lessee shall either accept  
27 or reject a lease renewal offer at least 30 days prior to the lease  
28 termination date. The lessee's failure to accept a renewal offer in  
29 a timely manner shall constitute a rejection of the renewal offer.  
30 A lessor's failure to offer a renewal or give the notice as required  
31 shall extend the lease term for 60 day increments until an offer or  
32 notice is made, and if a notice of termination is given after *the*  
33 lease termination date, the lessee shall have no less than 60 days  
34 to vacate the property. A lessee's failure to accept within 30 days  
35 a renewal offer made subsequent to the lease termination date  
36 shall constitute a rejection of the offer.

37 (e) A party who holds over after expiration of the lease shall  
38 be subject to unlawful detainer proceedings and shall also be  
39 subject to the lessor for holdover damages.



1 (f) A leaseback entered into pursuant to this section shall not  
2 affect the amount of compensation otherwise payable to the  
3 property owner for the property to be acquired.

4 *SEC. 4. This act shall apply prospectively and shall apply to*  
5 *property acquired after January 1, 2007.*

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